



UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

POWX INC.,

Plaintiff,

-against-

PERFORMANCE SOLUTIONS, LLC,

Defendant.

24-CV-01389 (MMG)

**ORDER**

MARGARET M. GARNETT, United States District Judge:

On March 3, 2025, Tarter Krinsky & Drogin LLP (“TKD”) and its associated attorneys filed a motion to withdraw as counsel for Plaintiff PowX (“PowX”) and to adjourn the March 6, 2025 conference for 60 days. *See* Dkt. No. 83 (the “Motion”). By letter dated March 3, 2025, Performance Solutions opposed. *See* Dkt. No. 86. The Motion is hereby GRANTED.

For substantially the reasons set forth in the Motion, recent case developments have created serious and concerning conflicts of interest between TKD lawyers and their client PowX that mandate the withdrawal of TKD’s representation. *See Hakim v. Leonhardt*, 126 F. App’x 25, 26 (2d Cir. 2005); *Whiting v. Lacara*, 187 F.3d 317, 321, 323 (2d Cir. 1999).<sup>1</sup> Thus, the attorneys from TKD who have filed notices of appearance on behalf of PowX—Tuvia Rotberg, Sandra A. Hudak, Chandler R. Sturm, and Eliezer Lekht (collectively, the “TKD Attorneys”)—are hereby RELIEVED as counsel for PowX.

In order to provide time for PowX to obtain substitute counsel, **the conference scheduled for March 6, 2025 is hereby ADJOURNED until May 8, 2025 at 11:30 a.m.** The conference will remain in person in Courtroom 906 of the Thurgood Marshall Courthouse, 40 Foley Square, New York, NY 10007.

In addition to the above, and given the serious allegations of attorney misconduct and the Court’s inherent powers to supervise the conduct of lawyers appearing before it, *see Chambers v. NASCO, Inc.*, 501 U.S. 32, 43 (1991), the TKD Attorneys are hereby ORDERED to:

1. Continue to monitor developments in this case docket daily despite being relieved as counsel for PowX;
2. Personally appear at the conference on May 8, 2025<sup>2</sup>;

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<sup>1</sup> To be clear, the Court’s decision to grant the Motion is grounded in the issues presented in § I of the Motion with respect to the conflicts of interest and the potential for the TKD attorneys to be witnesses in this matter; the fact of PowX’s non-payment is not a basis for the Court’s decision. *See* Dkt. No. 83 at 2–3.

<sup>2</sup> Only Tuvia Rotberg and Sandra A. Hudak, as the lead TKD attorneys on the matter, are ordered to appear at the conference.

3. Preserve any and all records of communications with PowX and/or all records relating to their representation of PowX;
4. Instruct PowX and Mr. Laufer to preserve any and all records of communications with TKD and/or all records relating to TKD's representation of PowX, as well as reminding them of the ongoing duty to preserve all records and communications related to this litigation generally;
5. By no later than **March 7, 2025**, confirm by letter to the Court that they have served this order on PowX by email and first-class mail and have instructed PowX and Mr. Laufer to preserve communications and records, as per directive (4) above; and
6. If TKD or any of the TKD Attorneys retains counsel to represent them in connection with the matters raised in Performance Solutions' February 27, 2025 letter, they shall promptly notify counsel for Performance Solutions and the Court of the name and contact information of such counsel.

The letter motion to seal the Declaration of Tuvia Rotberg filed in support of the Motion, *see* Dkt. Nos. 82, 84, 85, is hereby GRANTED. The Court finds that sealing the portions of the declaration that reference sensitive information concerning PowX and the attorney-client relationship is necessary to preserve confidentiality. *See Patsy's Brand, Inc. v. I.O.B. Realty, Inc.*, No. 99-CV-10175 (KMW), 2025 WL 449545, at \*1 (S.D.N.Y. Jan. 29, 2025).

Nothing in this order implicates the ability of Performance Solutions to file any of the motions identified in its letter of February 27, 2025; such motions may be filed at any time.

The Clerk of Court is respectfully directed to terminate Dkt. Nos. 82 and 83. The Clerk of Court is further respectfully directed to terminate the TKD Attorneys as counsel for PowX on the docket.

Dated: March 4, 2025  
New York, New York

SO ORDERED.

  
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MARGARET M. GARNETT  
United States District Judge